

S/N 09/754,826

PATENT #3

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Mohamed E. El Halawani et al

Examiner: Unknown

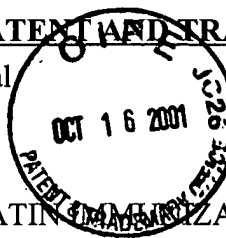
Serial No.: 09/754,826

Group Art Unit: Unknown

Filed: January 4, 2001

Docket: 600.492US1

Title: USE OF PASSIVE MYOSTATIN ANTAGONIZATION



PETITION UNDER 37 C.F.R. 1.47(a)

Commissioner for Patents
Washington, D.C. 20231

Pursuant to 37 C.F.R. 1.47(a) and 35 U.S.C. § 116, second paragraph, Applicant submits this Petition seeking permission to file the above-identified application without the signature of the following omitted co-inventor who has failed to execute the application: Seungkwon You. Mr. You's last known address is the School of AG Biotechnol, Seoul National University, Suwon 441-722, Republic of Korea.

The below-signed attorney, Janet E. Embretson, is a patent attorney employed by the firm of Schwegman, Lundberg, Woessner & Kluth, P.A., and represents the University of Minnesota. Employees of the University of Minnesota are to assign their rights in any invention created during their employ at the University of Minnesota to Regents of the University of Minnesota. Thus, Regents of the University of Minnesota is the owner of the above-identified application as both Mohamed E. El Halawani and Seungkwon You, the named co-inventors of the present application, were employed by the University of Minnesota at the time the invention was made. An assignment from co-inventor Mohamed E. El Halawani to Regents of the University of Minnesota is enclosed herewith.

Also enclosed herewith is a Declaration of Janet E. Embretson, a Declaration of Dawn M. Poole and a Declaration of Rachel Muntean in accordance with 37 C.F.R. § 1.47(a). Ms. Embretson, Ms. Poole and Ms. Muntean are believed to be the persons with first-hand knowledge of the details as set forth in this Petition pertaining to the most recent attempts at obtaining the signature of co-inventor Seungkwon You. Applicant believes that the Petition and the Embretson, Poole and Muntean Declarations constitute acceptable proof of the inventor's lack of response, and show that reasonable efforts were attempted to obtain his signature on the Combined Declaration and Power of Attorney.

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Pertinent Facts Regarding Omitted Inventor's Lack of Response

The application was filed on January 4, 2001 without executed formal documents. As part of regular office procedures at Schwegman, Lundberg, Woessner & Kluth, P.A., when formal documents are not filed with a patent application, a Combined Declaration and Power of Attorney and Assignment is prepared upon receipt of a serial number from the U.S. Patent and Trademark Office. After receipt of the formal papers, on February 9, 2001 Rachel Muntean, an employee of the University of Minnesota, sent a package to Mohamed E. El Halawani via interoffice mail. The package included a letter, which was from Ms. Muntean's supervisor, Jeff Carpenter, formal papers and a copy of the specification accorded U.S. application Serial No. 09/754,826 (paragraph 3 of the Muntean Declaration). The letter requested that Mohamed E. El Halawani sign and date the enclosed Declaration/Power of Attorney and Assignment and then route the paperwork to his fellow co-inventor, Seungkwon You (paragraph 3 of the Muntean Declaration). Mohamed E. El Halawani later informed Ms. Muntean that Seungkwon You no longer worked for the University of Minnesota and had returned to Korea (paragraph 3 of the Muntean Declaration). On June 26, 2001, Ms. Muntean informed Seata Creg, an individual in the employ of Schwegman, Lundberg, Woessner & Kluth, P.A., that she had been unable to contact Seungkwon You (paragraph 3 of the Muntean Declaration).

On August 16, 2001, Dawn M. Poole, an individual in the employ of Schwegman, Lundberg, Woessner & Kluth, P.A., prepared and sent, via DHL, a package to Seungkwon You which contained a letter, a copy of the specification accorded Serial No. 09/754,826, a Combined Declaration and Power of Attorney and an Assignment (paragraph 3 of the Poole Declaration). The letter requested that Seungkwon You date and sign the Declaration and Power of Attorney and Assignment and return the executed documents for filing in the U.S. Patent and Trademark Office by September 4, 2001 (paragraph 3 of the Embretson Declaration).

On August 24, 2001, Ms. Poole received a letter from DHL indicating that they were unable to deliver the package which had been sent to Seungkwon You due to an incorrect address and the lack of a telephone number for the recipient (paragraph 4 of the Poole Declaration). After speaking with a representative of DHL, Ms. Poole provided DHL with the last known email address of Seungkwon You and was informed by DHL that they would send Seungkwon You an email indicating that they had a package for him (paragraph 4 of the Poole Declaration).

On September 4, 2001, the below-signed attorney received an email (paragraph 4 of the Embretson Declaration) from Seungkwon You in which Seungkwon You noted that it was too late for him to sign and return the documents by the deadline of September 4, 2001 and asked for direction on what he should do. The below-signed attorney sent a reply email to Seungkwon You on that same day requesting that he execute and return the Declaration and Power of Attorney and Assignment as soon as possible and indicating that if she did not hear from him by September 10, 2001, she would presume that he was refusing to execute the Declaration and Power of Attorney and Assignment (paragraph 5 of the Embretson Declaration). As of the date the Embretson Declaration was executed, Ms. Embretson had not heard from Seungkwon You (paragraph 6 of the Embretson Declaration).

On September 17, 2001, Ms. Poole received a copy of a DHL receipt of delivery signed by Seungkwon You for the package referred to above (paragraph 5 of the Poole Declaration).

Applicant submits that the foregoing facts, as supported by the Declarations of Janet E. Embretson, Dawn M. Poole and Rachel Muntean, establish a *bona fide* and diligent attempt to comply with the provisions of Rules 1.46 and 1.63, and accordingly request that Applicant's Petition be granted.

In accordance with 37 C.F.R. § 1.47(a) and M.P.E.P. 409.03(a), co-inventor Mohamed E. El Halawani has provided a Declaration/Power of Attorney (filed herewith) on his own behalf and on behalf of the omitted co-inventor, Seungkwon You. Applicant includes the petition fee of \$130.00 as set forth under 37 C.F.R. § 1.17(h). However, if additional fees or credits should be required, please charge or credit Deposit Account No. 19-0743 in the appropriate amount.

Respectfully submitted,

MOHAMED E. EL HALAWANI ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.

P.O. Box 2938

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(612) 373-6959

Date

October 11, 2001

By

Janet E. Embretson
Janet E. Embretson
Reg. No. 39,665

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 11 day of October, 2001.

Name

Seatemathie Greg

Signature

Seatemathie Greg